

Proposed CAN Rule Changes related to Motion for Termination of Parental Rights

Rule 20. Notice of first hearing.

The petition and notice of the first hearing shall provide at least ten (10) days notice, unless the first hearing is a preliminary hearing regarding emergency custody pursuant to W. Va. Code § 49-4-602, in which case the parties and all persons entitled to notice and the right to be heard must be provided at least five (5) days actual notice. The notice of hearing shall specify the time and place of the first hearing, the right of parties to counsel, and the fact that the proceeding can result in the permanent termination of parental, custodial, or guardianship rights. Such notice shall include the following statement:

Termination of the parent's rights will be considered at this hearing. "Termination of parental rights" means the loss of all parental rights, including custody, visitation, inheritance, and communication with the child. Failure to appear personally or in writing will waive all rights to a hearing, and parental rights may be terminated at the hearing. If termination of parental rights is granted, the parent will receive no notice of future legal proceedings concerning the child. The parent may still be obligated to pay child support for the child after termination of parental rights.

The court shall send a copy of the petition and notice of first hearing to the appropriate CASA representative, if one is appointed.

Rule 29. Notice of the child's case plan; clear indication that termination of parental rights may be pursued.

Copies of the child's case plan shall be provided to the parties, their counsel, and persons entitled to notice and the right to be heard, at least five (5) judicial days prior to the disposition hearing. If one of the child's permanency plans requires termination of parental rights, the case plan shall indicate clearly that termination of parental rights may be pursued.

Rule 30. Exchange of information before disposition hearing; notice of motion for termination of parental rights.

At least five (5) judicial days prior to the disposition hearing, each party shall provide the other parties, persons entitled to notice and the right to be heard, and the court a list of possible witnesses, with a brief summary of the testimony to be presented at the disposition hearing, and a list of issues of law and fact, and a written motion for termination of a parent's rights, if applicable. Parties shall have a continuing obligation to update information until the time of the disposition hearing.

Rule 31. Notice of disposition hearing and consideration of termination of parental rights.

Notice of the date, time, and place of the disposition hearing shall be given to all parties, their counsel, and persons entitled to notice and the right to be heard. If termination of parental rights will be considered at the hearing, the notice shall include the following statement:

Termination of the parent's rights will be considered at this hearing. "Termination of parental rights" means the loss of all parental rights, including custody, visitation, inheritance, and communication with the child. Failure to appear personally or in writing will waive all rights to a hearing, and parental rights may be terminated at the hearing. If termination of parental rights is granted, the parent will receive no notice of future legal proceedings concerning the child. The parent may still be obligated to pay child support for the child after termination of parental rights.

Rule 35. Uncontested termination of parental rights and contested termination and contests to the case plan.

(a) *Uncontested termination of parental rights.* — If a parent voluntarily relinquishes parental rights or fails to contest termination of parental rights, the court shall make the following inquiry at the disposition hearing: (1) If the parent is present at the hearing but fails to contest termination of parental rights, the court shall determine whether the parent fully understands the consequences of a termination of parental rights, is aware of possible less drastic alternatives than termination, and was informed of the right to a hearing and to representation by counsel.

(2) If the parent is not present in court and has not relinquished parental rights but has failed to contest the termination, the petitioner shall make a prima facie ("on its face") showing that there is a legal basis for the termination of parental rights and the court shall determine whether the parent was given proper notice of the proceedings.

(3) If the parent is present in court and voluntarily has signed a relinquishment of parental rights, the court shall determine whether the parent fully understands the consequences of a termination of parental rights, is aware of possible less drastic alternatives than termination, and was informed of the right to a hearing and to representation by counsel.

(4) If the parent is not present in court but has signed a relinquishment of parental rights, the court shall determine whether there was compliance with all state law requirements regarding a written voluntary relinquishment of parental rights and whether the parent was thoroughly advised of and understood the consequences of a

termination of parental rights, is aware of possible less drastic alternatives than termination, and was informed of the right to a hearing and to representation by counsel.

(b) *Contested terminations and contests to case plan.* — (1) When termination of parental rights is sought and resisted, the court shall hold an evidentiary hearing on the issues thus made, including the issues specified by statute and make such findings with respect thereto as the evidence shall justify. All parties shall receive notice of the date, time, and place of the hearing at which termination of parental rights will be considered. Such notice shall include the following statement:

Termination of the parent's rights will be considered at this hearing. "Termination of parental rights" means the loss of all parental rights, including custody, visitation, inheritance, and communication with the child. Failure to appear personally or in writing will waive all rights to a hearing, and parental rights may be terminated at the hearing. If termination of parental rights is granted, the parent will receive no notice of future legal proceedings concerning the child. The parent may still be obligated to pay child support for the child after termination of parental rights.

Upon making such findings, the court shall then determine if the case plan or plans before the court require amendment by reason of the findings of the court and require such modification of the plan or plans as may be appropriate.

(2) The guardian *ad litem* for the children, the respondents and their counsel, and persons entitled to notice and the right to be heard, shall advise at the dispositional hearing and, where termination is sought after the court's findings on the factual issues surrounding termination are announced, whether any such persons seek a modification of the child's case plan as submitted or desire to offer a substitute child's case plan for consideration by the court. The court shall require any proposed modifications or substitute plans to be promptly laid before the court and take such action, including the receipt of evidence with respect thereto, as the circumstances shall require. It shall be the duty of all the parties to the proceeding and their counsel to co-operate with the court in making this information available to the court as early as possible. It shall also be appropriate for the court to require alternative provisions of a case plan to be submitted prior to the taking of evidence in a dispositional hearing to suit alternative possible findings of the court after evidence is taken on any contested issues. Except as to the establishment of grounds for termination and the establishment of other necessary facts, dispositional hearings are not intended to be confrontational hearings; rather such are concerned with the best interests of the abused or neglected children involved.